

1 (Funding of Response Activities), Paragraph H.2.b-c. Settling
2 Work Defendant shall reimburse Lockheed Martin for that portion
3 of EPA's costs incurred to fund EPA's takeover and/or performance
4 of O&M Activities which is caused by the necessity for EPA to
5 take over such O&M Activities from the Settling Work Defendant
6 pursuant to this Section and Paragraph. If EPA takes over the
7 performance of some or all of the O&M Activities pursuant to this
8 Section and Paragraph, EPA shall issue a determination at the
9 request of Settling Work Defendant or Lockheed Martin concerning
10 which costs incurred by EPA were due to the necessity for EPA to
11 take over such O&M Activities from the Settling Work Defendant.
12 In no event shall the accounting of such costs for which the
13 Settling Work Defendant may be required to reimburse Lockheed
14 Martin pursuant to this Paragraph continue for a period longer
15 than one year from EPA's takeover of such O&M Activities.
16 Settling Work Defendant or Lockheed Martin may invoke the
17 procedures set forth in Section XX (Dispute Resolution) to
18 dispute EPA's determination concerning such costs.

19 G. Settling Work Defendant may invoke the procedures set
20 forth in Section XX (Dispute Resolution) to dispute EPA's
21 determination that the Settling Work Defendant failed to
22 implement a provision of the O&M Activities in an adequate or
23 timely manner as arbitrary and capricious or otherwise not in
24 accordance with law. Such dispute shall be resolved on the
25 administrative record. Except as is necessary to address an
26 imminent and substantial endangerment to human health or the
27 environment, EPA shall provide Settling Work Defendant with ten
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1 (10) days written notice of its intent to perform a portion or
2 all of the O&M Activities. In the notice, EPA shall also
3 describe the alleged deficiency. If the Settling Work Defendant
4 disagrees with EPA's determination that it has failed to perform,
5 in an adequate and timely manner, the O&M Activities required to
6 be performed by this Consent Decree, and Settling Work Defendant
7 desires to dispute EPA's determination in this regard, Settling
8 Work Defendant shall invoke the dispute resolution provisions of
9 Section XX (Dispute Resolution) within thirty (30) days of
10 receiving written notice of EPA's intent. Invocation of dispute
11 resolution shall not divest EPA of its right to perform the O&M
12 Activities during the dispute. Upon receipt of notification that
13 EPA intends to take over the performance of a portion or all of
14 the O&M Activities, Settling Work Defendant's obligations to
15 perform such O&M Activities pursuant to this Consent Decree shall
16 terminate and stipulated penalties, if any are being incurred due
17 to Settling Work Defendant's failure to perform such O&M
18 Activities in a timely or adequate manner, shall cease to accrue
19 against Settling Work Defendant for such failure.

20 H. Notwithstanding any other provision of this Consent
21 Decree, the United States and the State retain all authority and
22 reserve all rights to take any and all response actions
23 authorized by law. However, the obligation, if any, of the
24 Settling Defendants to reimburse the United States for taking
25 such actions shall be governed by the provisions of this Consent
26 Decree to the extent Settling Defendants comply with their
27 obligations to fund or perform such response actions pursuant to
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1 this Consent Decree.

2 XXIII. COVENANTS BY SETTLING DEFENDANTS

3 A. Settling Defendants hereby covenant not to sue and agree
4 not to assert any claims or causes of action against the United
5 States with respect to the Site or this Consent Decree,
6 including, but not limited to, any direct or indirect claim for
7 reimbursement from the Hazardous Substance Superfund (established
8 pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through
9 CERCLA Sections 106(b)(2), 111, 112, 113, 42 U.S.C.
10 §§ 9606(b)(2), 9611, 9612, and 9613, or any other provision of
11 law, any claim against the United States, including any
12 department, agency or instrumentality of the United States under
13 CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to
14 the Site except as expressly reserved in this Section, Paragraphs
15 (A)(1), (2), or (3) of this Consent Decree or Section XVII,
16 Paragraph B of the First Consent Decree, or any claims arising
17 out of response activities at the Site. However, the Settling
18 Defendants reserve, this Consent Decree is without prejudice to,
19 and nothing in this Consent Decree shall be interpreted as
20 waiving, abrogating or resolving:

21 (1) any claims which any Settling Defendant has or may
22 have based upon any alleged liability of the United States
23 Department of Defense, any branch or division thereof ("DOD"), or
24 any predecessor agency to DOD for conditions at the Site pursuant
25 to CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C. §§ 9606,
26 9607, 9613, 9620 or 9659 or RCRA Section 7002, 42 U.S.C. § 6972;

27 (2) any claims which any Settling Defendant has or may
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1 have with respect to the Site against the United States pursuant
2 to any contract between any Settling Defendant and the United
3 States or between any Settling Defendant and any government
4 contractor(s) related to the Site; or

5 (3) actions against the United States based on
6 negligent actions taken directly by the United States (not
7 including oversight or approval of the Settling Defendants' plans
8 or activities) that are brought pursuant to any statute other
9 than CERCLA and for which the waiver of sovereign immunity is
10 found in a statute other than CERCLA.

11 (4) actions against the State based on negligent
12 actions taken directly by the State (not including oversight or
13 approval of the Settling Defendants' plans or activities) that
14 are brought pursuant to any statute or law other than CERCLA,
15 RCRA, and Chapters 6.5, Sections 25100 et seq., and 6.8, Sections
16 25300 et seq. of the California Health & Safety Code.

17 B. In agreeing to these reservations, the United States and
18 the State do not admit liability on any such claims and expressly
19 reserve any and all defenses that either of them may have to any
20 such claims.

21 C. Except as expressly set forth in this Consent Decree,
22 Settling Defendants do not waive any claim against and do not
23 release or covenant not to sue the United States or the State
24 with respect to any matter. Nothing in this Consent Decree shall
25 be deemed to constitute preauthorization of a claim within the
26 meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.
27 § 300.700(d).
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1 D. Settling Defendants hereby covenant not to sue and agree
2 not to assert any claims or causes of action against the State
3 with respect to the Site or this Consent Decree, including, but
4 not limited to, (1) any direct or indirect claim for
5 reimbursement from the Hazardous Waste Control Account, Hazardous
6 Substance Account, or Hazardous Substance Cleanup Fund through
7 Health and Safety Code section 25375 or any other provision of
8 law; (2) any claim against the State under Sections 107 or 113 of
9 CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7003 of RCRA, 42
10 U.S.C. § 9673; or (3) any other claims arising out of Settling
11 Defendants' response activities at the Site, including but not
12 limited to nuisance, trespass, taking, equitable indemnity and
13 indemnity under California law, contribution under California and
14 federal law, or strict liability under California law.

15 XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

16 A. Nothing in this Consent Decree shall be construed to
17 create any rights in, or grant any cause of action to, any person
18 not a Settling Defendant or a Released Party under this Consent
19 Decree. The preceding sentence shall not be construed to waive
20 or nullify any rights that any person not a signatory to this
21 Consent Decree may have under applicable law. Each of the
22 Parties expressly reserves any and all rights (including, but not
23 limited to, any right to contribution), defenses, claims,
24 demands, and causes of action which each party may have with
25 respect to any matter, transaction, or occurrence relating in any
26 way to the Site against any person not a Settling Defendant or
27 Released Party under this Consent Decree.
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1 B. At such time as a judgment is entered and becomes final
2 judicially approving this Consent Decree, each Settling Defendant
3 hereby expressly waives any and all rights (including, but not
4 limited to, any right to contribution, defenses, claims, demands,
5 and causes of action under State of California or federal law)
6 against all other Settling Defendants and Released Parties with
7 respect to Covered Matters specified in Paragraph C of this
8 Section. Notwithstanding the foregoing, any funding of the
9 repair of earthquake damage ("Earthquake Funding") by Lockheed
10 Martin pursuant to Section XIV (Funding of Response Activities),
11 Paragraph N of this Consent Decree, is without prejudice to its
12 right to assert claims against other Settling Defendants (except
13 the Appendix 3 parties and Settling Work Defendant) for
14 reimbursement of Earthquake Funding. No Settling Defendant
15 (except the Appendix 3 parties and Settling Work Defendant) shall
16 assert that any agreement which exists between any of the
17 Settling Defendants at the time of entry of this Second Consent
18 Decree acts as a bar or provides a defense to any reimbursement
19 or contribution claim by any other Settling Defendant for
20 Earthquake Funding. The provisions of this Paragraph
21 specifically supersede the provisions of Paragraph B of Section
22 XXII (Contribution Protection) of the First Consent Decree. With
23 regard to claims by third parties for contribution against
24 Settling Defendants and/or Released Parties for such Covered
25 Matters specified in Paragraph C of this Section, the Parties
26 hereto agree that the Settling Defendants and Released Parties
27 are entitled to such protection from contribution actions or
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1 claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C.
2 § 9613(f)(2). Certain defendants have entered into private
3 agreements with regard to certain matters which relate to those
4 that form the subject matter of this Consent Decree; the waiver
5 expressed in this Paragraph shall not operate to preclude
6 enforcement of those private agreements.

7 C. The Covered Matters in this Consent Decree are:

8 1. EPA's and the State's Past Site-Specific Response
9 Costs and Past Basin-wide Response Costs,

10 2. EPA's and the State's Future Site-Specific Response
11 Costs,

12 3. all matters addressed in the First Consent Decree
13 and this Consent Decree,

14 4. all matters addressed in UAO 92-12 through the
15 period covered during this Consent Decree, and

16 5. all costs of implementing the O&M Activities and
17 any other response activity to be performed under this Consent
18 Decree, except to the extent this Consent Decree does not provide
19 for one or more of the Settling Defendants to fund and/or to
20 perform any part of such activities.

21 D. The Settling Defendants agree that with respect to any
22 suit or claim for contribution brought by them for Covered
23 Matters they will notify the United States and the State in
24 writing no later than sixty (60) days prior to the initiation of
25 such suit or claim.

26 E. The Settling Defendants also agree that with respect to
27 any suit or claim for contribution brought against them for
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1 Covered Matters they will notify the United States and the State
2 in writing within sixty (60) days of service of the complaint on
3 them. In addition, Settling Defendants shall notify the United
4 States and the State in writing within ten (10) days of service
5 or receipt of any Motion for Summary Judgment and within ten (10)
6 days of receipt of any order from a court setting a case for
7 trial.

8 F. In any subsequent administrative or judicial proceeding
9 initiated by the United States or the State for injunctive
10 relief, recovery of response costs, or other appropriate relief
11 relating to the Site, Settling Defendants shall not assert, and
12 may not maintain, any defense or claim based upon the principles
13 of waiver, res judicata, collateral estoppel, issue preclusion,
14 claim-splitting, or other defenses based upon any contention that
15 the claims raised by the United States or the State in the
16 subsequent proceeding were or should have been brought in the
17 instant case; provided, however, that nothing in this Paragraph
18 affects the enforceability of the covenants not to sue set forth
19 in Section XXII (Covenants Not to Sue by Plaintiffs).

20 G. Payment of all sums which a Settling Cash Defendant is
21 obligated to pay pursuant to Section XIV (Funding of Response
22 Activities) of this Consent Decree, comprises full settlement as
23 to that Settling Cash Defendant, any related Released Party as
24 described in Appendix 1, and any Related Settling Defendant as
25 described in Appendix 1, for all Covered Matters and thus, such
26 Settling Cash Defendants, Related Settling Defendants and related
27 Released Parties are entitled to such protection from
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1 contribution actions or claims as is provided by CERCLA Section
2 113(f)(2), 42 U.S.C. § 9613(f)(2).

3 XXV. ACCESS TO INFORMATION

4 A. Settling Defendants shall provide to EPA and the State,
5 upon request, copies of all documents or portions thereof which
6 are not privileged by the attorney-client privilege, the attorney
7 work product doctrine, or any other privilege recognized by law,
8 and information within their possession or control or that of
9 their contractors or agents relating to response actions at the
10 Site or to the implementation of this Consent Decree including,
11 but not limited to, sampling, analysis, chain of custody records,
12 manifests, trucking logs, receipts, reports, sample traffic
13 routing, correspondence, or other documents or information
14 related to the O&M Activities. Settling Defendants shall also
15 make available to EPA and the State, for purposes of
16 investigation or information gathering, their employees, agents,
17 or representatives with knowledge of relevant facts concerning
18 the performance of the Q&M Activities.

19 B. Settling Defendants may assert confidentiality claims
20 covering part or all of the documents or information submitted to
21 Plaintiffs under this Consent Decree to the extent permitted by
22 and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.
23 § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information
24 determined to be confidential by EPA will be afforded the
25 protection specified in 40 C.F.R. Part 2, Subpart B. If no claim
26 of confidentiality accompanies documents or information when they
27 are submitted to EPA and the State, or if EPA has notified
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1 Settling Defendants that the documents or information are not
2 confidential under the standards of Section 104(e)(7) of CERCLA,
3 the public may be given access to such documents or information
4 without further notice to Settling Defendants.

5 C. The Settling Defendants may assert that certain
6 documents, records and other information are privileged under the
7 attorney-client privilege, the attorney work product doctrine, or
8 any other privilege recognized by law. In the case of documents,
9 if a Settling Defendant asserts such a privilege in lieu of
10 providing documents, it shall provide the Plaintiffs with the
11 following: (1) the title of the document, record, or
12 information; (2) the date of the document, record, or
13 information; (3) the name and title of the author of the
14 document, record, or information; (4) the name and title of each
15 addressee and recipient; (5) a description of the contents of the
16 document, record, or information: and (6) the privilege asserted
17 by such Settling Defendant. However, no documents, reports or
18 other information created or generated pursuant to the
19 requirements of this Consent Decree shall be withheld on the
20 grounds that they are privileged. If a claim of privilege
21 applies only to a portion of a document, the document shall be
22 provided to EPA in redacted form.

23 D. No claim of confidentiality or privilege shall be made
24 with respect to any document that falls within Section
25 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F).
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1 XXVI. RETENTION OF RECORDS

2 A. Until ten (10) years after the Settling Defendants'
3 receipt of EPA's notification pursuant to Paragraph B.2 of
4 Section XV (Certification of Completion of the Work), each
5 Settling Defendant shall preserve and retain all records and
6 documents now in its possession or control or which come into its
7 possession or control that relate in any manner to the
8 performance of the O&M Activities or liability of any person for
9 response actions conducted and to be conducted at the Site,
10 regardless of any document retention policy to the contrary.
11 Until ten (10) years after Settling Defendants' receipt of EPA's
12 notification pursuant to Paragraph A.2 of Section XV
13 (Certification of Completion), Settling Defendants shall also
14 instruct their contractors and agents to preserve all documents,
15 records, and information of whatever kind, nature or description
16 relating to the performance of the O&M Activities.

17 B. At the conclusion of this document retention period,
18 Settling Defendants shall notify the United States and the State
19 at least ninety (90) days prior to the destruction of any such
20 records or documents, and, upon request by the United States or
21 the State such Settling Defendant shall deliver any such records
22 or documents to EPA or the State. A Settling Defendant may
23 assert that certain documents, records and other information are
24 privileged under the attorney-client privilege, the attorney work
25 product doctrine, or any other privilege recognized by law. In
26 the case of documents, if a Settling Defendant asserts such a
27 privilege, it shall provide the Plaintiffs with the following:
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1 (1) the title of the document, record, or information; (2) the
2 date of the document, record, or information; (3) the name and
3 title of the author of the document, record, or information; (4)
4 the name and title of each addressee and recipient; (5) a
5 description of the subject of the document, record, or
6 information: and (6) the privilege asserted by the Settling
7 Defendant. However, no documents, reports or other information
8 created or generated pursuant to the requirements of this Consent
9 Decree shall be withheld on the grounds that they are privileged.
10 If a claim of privilege applies only to a portion of the
11 document, it shall be provided to EPA in redacted form.

12 C. Each Settling Defendant hereby certifies, individually,
13 that it has not willfully and for an improper purpose altered,
14 mutilated, discarded, destroyed or otherwise disposed of any
15 records, documents or other information relating to its potential
16 liability regarding the Site since notification of potential
17 liability by the United States or the State or the filing of suit
18 against it regarding the Site and that to the best of its
19 knowledge, that it has fully complied with any and all EPA
20 requests for information pursuant to Section 104(e) and 122(e) of
21 CERCLA, 42 U.S.C. § 9604(e) and 9622(e), and Section 3007 of
22 RCRA, 42 U.S.C. § 6927.

23 XXVII. NOTICES AND SUBMISSIONS

24 A. Whenever, under the terms of this Consent Decree,
25 written notice is required to be given or a report or other
26 document is required to be sent by one party to another, it shall
27 be directed to the individuals at the addresses specified below,
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